IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 12TH NOVEMBER 2007 / 21ST KARTHIKA 1929

WP(C).No. 34876 of 2005(B)

OS.117/2004 of M.C.,VADAKKANCHERRY

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PETITIONERS:

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1. FR. JAMES DAVID, ARIMBOOR HOUSE,
   CHALISSERY, THALAPPILLY TALUK,
   THRISSUR DISTRICT.

2. FR. MATHAI, S/O.POULOSE,
   KOONAPPILLY HOUSE, ALAMPARITHA,
   KIZHAKKANCHERRY, ELAVUMPADAM POST, ALATHUR TALUK,
   PALAKKAD DISTRICT.

3. P.A.BABY, S/O.ABRAHAM,
   PERUMTHUMKUZHIYIL HOUSE, VENNUR VILLAGE,
   VENNUR POST, THALAPPILLY TALUK,
   THRISSUR DISTRICT.

4. JENO GEORGE, S/O.GEORGE,
   KARIKKOTTUPUTHENPURAYIL HOUSE,
   ELANAD, THALAPPILLY TALUK, THRISSUR DISTRICT.

BY ADV. SRI.SAJAN VARGHEESE K., SRI.LIJU. M.P

RESPONDENTS:

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1. FR. MATHEW JACOB, PUTHUSSERIL HOUSE,
   OLLOOKARA VILLAGE, THRISSUR VILLAGE & DISTRICT.

2. BABU THOMAS, S/O.THOMAS,
   PALAKKATHADATHIL HOUSE, ELANAD POST,
   THALAPPILLY TALUK, THRISUR DISTRICT.

BY ADV. SRI.BIJU ABRAHAM
SRI.B.G.BHASKAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 12/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Appendix

Petitioners' Exts:

Ext.P1 true copy of the plaint in OS 117/2004 on the file of Munsiff's Court, Wadakkancherry.

Ext.P2 true copy of the judgment dated 1.4.2005 passed in WP (C) 9598/2005 on the file of this Hon'ble Court.

Ext.P3 true copy of the order dated 31.5.2005 passed in IA 402/2004 in OS 117/2004 on the file of Munsiff's Court, Wadakkancherry.

Ext.P4 true copy of the order dated 29.8.2005 passed in IA 1125/2005 inOS 117/2005 on the file of Munsiff's Court, Wadakkancherry.

Ext.P5 true copy of the judgment dated 9.11.2005 passed in CMA 107/2005 on the file of District Court, Thrissur.

Ext.P6 true copy of the trust deed 18.12.1991 registered in the name of Mar Ignatius Charitable Trust.

Ext.P7 trie cp[u pf yje deed Mp/2095/93 on the file of Pazhayannur Sub Registry office.

Ext.P8 true copy of the sale deed in respect of C schedule property.

Ext.P9 true copy of the pages No.26,28,36,48,54,116,52 and 56 of the Account book dt.10/97.

Ext.P10 true copy of the affidavit filed by the assignor in Ext.P8.

Ext.P11 true copy of the affidavit filed by the assignors in Ext.P7.

Ext.P12 true copy of the kalpana dated 12.4.1999 sent by His Holiness the Patriarch to the Bishop Yuhanan Mar Militious.

Ext.P13. true copy of the kalpana dated 25.11.2000 sent by His Holiness the Patriarch to the Bishop Yuhanan Mar Militious.

Ext.P14 true copy of the sustaticon issued by the Patyriarch in favour of Bishop Geevarghese Mar Athanesious dt. 9.12.02.

Ext.P15 true copy of othe minutes of the general body meeting held on 22.12.2002 and 14.9.2003.

Ext.P16 true copy of the judgment in CMA 74/03 on the file of District court, Thrissur dt. 29.10.03.

Ext.P17 true copy of IA 402/04 in OS 117/04 on the file of Munsiff's Court, Wadakkancharry.

Ext.P18 true copy of the objection to Ext.P17.

Ext.P19. true copy of the appointment order of the petitioner No.1 as the vicar of the church dt. nil.

M.N.Krishnan, J.

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W.P(C).No.34876 of 2007

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Dated this the 12th day of November, 2007.

JUDGMENT

This Writ Petition is filed seeking to set aside the order of the learned Additional District Judge, Thrissur in C.M.A.No.107 of 2005. The trial court did not pass any order of injunction. The appellate court found that the materials available were inadequate to decide either way and therefore directed that the Hundis situated in both B and C schedule properties be opened by a Commissioner and the amount be deposited in court. It is also stated that in case of necessity for maintenance the court below can pass appropriate orders. It is challenging the above order that the present Writ Petition is filed.

2. On 15.12.2005 this Court passed an order staying the appointment of an Advocate Commissioner pursuant to the judgment dated 9.11.2005 of the District Court. The stay order has been made absolute until further orders. When the matter came up for hearing today, both sides argued. Counsel for the writ petitioners argued that the order of the learned Additional District Judge is against facts and findings rendered by the learned Munsiff, who had considered the materials on record. On the other hand, respondents would contend that it is not so. Whatever it may be this is a case where the parties are litigating for a control, administration and management of the trust.

Learned counsel for the writ petitioners would submit that the issuance of a Commission and periodical visit by the Commissioner to open the Hundis may not be correct as it will affect the sentiments of the defendants in the case and therefore would request the court to direct the District Judge to reconsider the C.M.A.

3. Considering the nature of the contentions between the parties it is only desirable that the case be disposed of after a full fledged trial and permitting the parties to adduce evidence with reference to their contentions within a period of four months from today. As an interim arrangement, I feel that the writ petitioners herein can be directed to deposit a sum of Rs.15,000/- (Rupees fifteen thousand only) within a period of six weeks from today, which will be lying in court deposit without being withdrawn. If there is default the order of the District Court can be implemented.

Writ Petition is disposed of accordingly.

M.N.Krishnan,
Judge.

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